IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 17TH OCTOBER 2007 / 25TH ASWINA 1929

Bail Appl..No. 6315 of 2007()

C.R.NO. 163/07 OF CHENGANNUR EXCISE RANGE

PETITIONER/A2

SALEENA, D/O. SHAUKATH,
KUNNUMPURATH HOUSE, WARD NO.4, PULIYOOR VILLAGE,
CHENGANNUR TALUK.

BY ADV. SRI.P.GOPAKUMARAN NAIR
SMT.R.BEENA
SRI.AJITH MURALI

RESPONDENT/COMPLAINANT:

STATE OF KERALA, REPRESENTED BY
THE PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. JAI GEORG4E

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 17/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

- -

B.A.No. 6315 of 2007

- -

Dated this the 17th day of October, 2007

O R D E R

Application for anticipatory bail. The petitioner, a woman, faces allegations under the Kerala Abkari Act as the second accused. 12 litres of spirit were allegedly recovered from the house of A1. The petitioner's husband is the first accused. Her brother is the third accused. A4 is allegedly a supplier of the contraband article, who, along with the third accused, were the only persons available at the scene . They were arrested.

2. The learned counsel for the petitioner submits that the petitioner has been brought on the array of accused without any bonafides. Except that she is the wife of the first accused and the sister of the third accused, and happens to occupy the house along with them, there is nothing to indicate conscious possession of the contraband article. The petitioner was not admittedly available at the time of seizure. The counsel points out that even according to the prosecution accused 1, 3 and 4 have criminal antecedents. In these circumstances, in the total absence of any material to indicate the

complicity of the petitioner, an innocent house wife, anticipatory bail may be granted to the petitioner, it is prayed.

3. The learned Prosecutor opposes the application on the contention that it is the case of the prosecution that when she was available in the house she was also helping the others in the illicit trade.

4. Having considered all the relevant inputs, I am satisfied that anticipatory bail can be granted to the petitioner subject to appropriate conditions to be imposed in the interests of a fair, efficient and expeditious investigation. Notwithstanding S.41A of the Kerala Abkari Act, I am satisfied in the peculiar facts and circumstances of this case that the petitioner can be granted anticipatory bail.

5. In the result:

(1) This application is allowed.

(2) The following directions are issued under Section 438 Cr.P.C.

(a) The petitioner shall surrender before the learned Magistrate on 24.10.2007 at 11 a.m. The learned Magistrate shall release the petitioner on regular bail on condition that she executes a bond for Rs.25,000/- (Rupees twenty five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate.

(b) The petitioner shall make herself available for interrogation before the Investigating Officer between 10 a.m. and 3 p.m. on 25.10.2007 and 26.10.2007 and thereafter as and when directed by the Investigating Officer in writing to do so.

(c) If the petitioner does not appear before the learned Magistrate as directed in clause (1) above, these directions shall lapse on 24.10.07 and the police shall be at liberty thereafter to arrest the petitioner and deal with her in accordance with law.

(d) If the petitioner were arrested prior to her surrender on 24.10.2007 as directed in clause (1) above, she shall be released on bail on her executing a bond for Rs.25,000/- without any surety undertaking to appear before the learned Magistrate on 24.10.2007.

(R. BASANT)
Judge

tm